

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

**In the Matter of:**

**KEVIN A.**

**Claimant,**

**vs.**

**NORTH LOS ANGELES COUNTY  
REGIONAL CENTER,**

**Service Agency.**

**OAH No. L 2009030777**

**DECISION**

This matter came on regularly for hearing on May 7, 2009, in Van Nuys, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Kevin A.<sup>1</sup> (Claimant) was represented by his mother and authorized representative, Neda K.

North Los Angeles County Regional Center (Service Agency) was represented by its Contract Officer, Rhonda M. Campbell, BSN, RN, CDDN.

Oral and documentary evidence was received. The record was closed on the hearing date, and the matter was submitted for decision.

**ISSUE**

The parties agreed that the sole issue in this case is whether the Service Agency should fund two hours per week of speech therapy.

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<sup>1</sup> The surnames of Claimant and his mother are omitted from this Decision in order to protect Claimant's privacy.

## FACTUAL FINDINGS

1. Claimant is a seven-year-old, male client of the Service Agency with a diagnosis of autism.

2. Claimant is often referred to as “Arash.” He resides with his parents, who speak both English and Farsi. Claimant’s primary language is English, but he understands simple sentences his parents speak in Farsi.

3. Claimant has a long history of substantial delays in receptive and expressive language.

4. In an Individual Program Plan (IPP) dated January 23, 2007, the Service Agency agreed to fund up to 20 hours per week of intensive behavioral services (DTT) provided by California Psychcare. (Exhibit 4.)

5. Over time, Claimant’s parents grew dissatisfied with his progress in speech and language development. Claimant’s Service Coordinator recommended that Claimant’s parents request a new speech/language assessment from Claimant’s school. (Exhibits 5 and 8.) On November 6, 2007, the services provided by California Psychcare were divided to include 17 hours per week of direct intensive intervention and 14 hours per month of supervision, in order to better meet Claimant’s needs. (Exhibit 8.) On January 9, 2008, the Service Agency agreed to fund a two-hour speech evaluation for Claimant. At that time, Claimant’s father was awaiting the outcome of an informal dispute resolution with LAUSD regarding its offer of 60 minutes per week of speech therapy, which he considered insufficient to meet Claimant’s needs. (Exhibit 9.)

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6. On February 7, 2008, Claimant underwent a speech and language assessment by Speech, Language and Educational Associates. Following extensive testing, July Nelson, M.S., CCC-SLP, concluded:

Arash A. . . . is a pleasant, cooperative 6 years, 1 month old male with a diagnosis of Autism who presents with severely delayed receptive and expressive language skills in the 3 year, 1 month age range overall. Arash was able to comprehend simple questions and conversation, but was not able to demonstrate that he comprehended a variety of age level language concepts, such as quantity (e.g., show me 3 puppies), modifiers (e.g., big/small, tall/short), or prepositions (e.g., put the block *under* the bear). Expressively, Arash was able to produce simple 3-5 word sentences, but his utterances did not reflect the complexity or vocabulary that is expected of his chronological age. In fact, formal testing and Arash's spontaneous language sample both reflected spontaneous language in the 2-3 year old age range. Arash's articulation skills are currently age level, but he should continue to be monitored for his production of f/th which should stabilize at age 7 years.

Results of formal testing reveal that Arash's severe receptive and expressive language deficits are 2½ to 3 standard deviations below the mean and continue to require specialized instruction to remediate. Informal testing supports these findings. Therefore, the following services are recommended:

-Speech Therapy for 60 minutes twice weekly to increase receptive and expressive language skills. (Emphasis in text.) (Exhibit 17.)

7. In making her recommendation, Ms. Nelson did not take into account the speech therapy Claimant was already receiving at school. Claimant's Service Coordinator recommended to his parents that they pursue generic resources to procure the additional speech therapy services they desired for their son. (Exhibit 16.)

8. On September 30, 2008, Claimant's father spoke by telephone with Claimant's Service Coordinator. He told her that Claimant's school district had offered him 90 minutes of speech therapy per week. He also said that he and his wife were privately funding one hour per week of speech therapy. Claimant's father stated that he was dissatisfied with the services offered at Claimant's school and wanted the Service Agency to fund two hours of speech therapy per week. On October 28, 2008, he told the Service Coordinator that, at an Individualized Education Program (IEP) meeting one week earlier, the school district had offered only 60 minutes per week of speech therapy. (Exhibit 16.)

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9. On December 11, 2008, Claimant underwent another speech and language assessment with Judy Nelson of Speech, Language and Educational Associates. Ms. Nelson found that Claimant had not made any improvement and did not have any language change since his previous evaluation. In addition, he seemed more distracted during his second assessment than he did during his first. At the conclusion of the second assessment, Ms. Nelson opined:

Arash A. is a pleasant, cooperative 6-year, 10-month-old male with a diagnosis of Autism who presents with severely delayed receptive and expressive language skills in the overall age range of under 5 years old. Since Arash will be turning 7 years old in approximately one month, testing indicated that he is approximately two years delayed in the development of his communication skills.

Receptively, Arash was able to comprehend simple questions and conversation, however, he was not able to demonstrate that he comprehended or could orally use age and grade level vocabulary, morphology (endings that change the meaning of a word, such as plural “s”), or a variety of age level language concepts, such as quantity (e.g., show me *There are many dogs*).

Expressively, Arash was able to produce simple 3-5 word sentences, but his utterances did not reflect the complexity or vocabulary that is expected of his chronological age, and he typically produced sentence fragments with incorrect grammar. Arash’s articulation skills are accurate except that he continues to substitute f/th. Now that Arash is turning age 7 years, he requires remediation of f/th, as this sound should stabilize by age 7.

In regards to social communication, Arash did not initiate spontaneous communication, and he was typically echolalic of the examiner’s oral communication to him. He did not respond to greetings or goodbyes unless cued to answer. He did not request to play with games or toys in the room. He did not ask or answer simple questions in conversational interaction, or convey feelings, thoughts or experiences.

Results of formal testing reveal that Arash’s severe receptive and expressive language deficits are mainly below the 1<sup>st</sup> percentile, revealing that 99% or more of children his age can perform the language functions required in the testing tasks. Therefore, Arash continues to require specialized instruction to increase his receptive and expressive language skills. Informal testing supports these findings.

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Of concern is that this examiner evaluated Arash's language in February 2008 when Arash was 6-years, 1-month of age, and current testing revealed no significant language increase from that time to the current time of testing (9 months later). Arash is not demonstrating an increase in receptive or expressive vocabulary, comprehension of oral speech, sentence length, complexity, or grammar, or social communication skills.

Based upon the results of formal and informal testing, the following services are recommended:

-Speech Therapy in the school setting for 60 minutes once weekly, to maximize receptive and expressive language skills, functional communication in the classroom and access to the academic curriculum.

-Speech Therapy for 60 minutes one-on-one outside of the school setting to increase receptive and expressive language skills, functional communication, social communication, and communication in regards to activities of daily life.

-Speech Therapy for 60 minutes in a small group outside of the school setting to target social communication skills with peers. (Exhibit 19.)

10. On February 11 and 25, 2009, the Service Agency's Autism Clinical Specialist, Luisa F. Canon G., M.A., observed Claimant in the home and school settings, respectively. Ms. Canon G. found that the services being provided by California Psychcare were not adequately meeting Claimant's speech and language development needs. As a result of the techniques being utilized by California Psychcare, Claimant's learning rate was unacceptably low. Ms. Canon G. opined:

The following are recommendations from this consultant to Kevin's program:

1. The DTT/ABA program should FOCUS on language and communication through techniques drawn from the principles of behavior analysis and following the structure and analysis of verbal behavior. The production of functional and spontaneous language in children with autism has been appropriately addressed by behavior analysis and it is supported by several studies published in peer reviewed journals. Kevin's deficits in the production of language are modulated by environmental variables, specifically motivation, and it [*sic*] is not maintained by articulation, intonation, modulation or syntaxes [*sic*] deficits.

2. The DTT/ABA program should involve parents in the implementation of those techniques during therapy and at all times.

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3. An almost complete modification of the behavioral program or a change in vendor agency to effectively address Kevin's language deficits is recommended.

4. The following textbook is recommended to parents to clarify what an effective behavior analytic program can accomplish in terms of verbal behavior: Teaching Language to Children with Autism and Other Developmental Disabilities by Mark L. Sundberg, Ph.D., and James W. Partington, Ph.D. (May 1998). (Emphasis in text.) (Exhibit 21.)

11. Following her observation in February 2009, Ms. Canon G. met with personnel from California Psychcare to discuss her recommendations. California Psychcare was receptive to the proposed changes and is presently developing a more appropriate program for Claimant. Ms. Canon G. will provide technical support to California Psychcare in implementing the program, and she will monitor the new program in Claimant's home.

12. Ms. Canon G. contends that Claimant's language problems are motivational rather than speech-related. She firmly believes that Claimant's parents must be involved in his speech and language training, especially since they have more opportunity to interact with him than the therapists do. Without their involvement, Ms. Canon G. believes Claimant will be unable to communicate with his parents outside of the presence of a therapist. However, with their involvement, Claimant's progress will be maximized.

13. Nikki McRory, M.A., CCC-SLP, is a speech and language pathologist with 15 years of experience working with children with developmental disabilities and behavioral issues. At the request of the Service Agency, Ms. McRory reviewed Claimant's various records and reports and formed an independent opinion as to how best to address Claimant's speech and language development.

14. Ms. McRory believes an analyst should consider the overall results of standardized assessment, but also look at "the whole child" with respect to understanding all of the services he/she is receiving, in order to adjust for a "cross-over of goals." The analyst should also consider how the child best learns. Based on her record review and that perspective, Ms. McRory opined that the best approach for Claimant is a combination of his current level of programming he receives at school and an appropriate applied behavior analysis program. She believes many of his goals can best be addressed at school and at home, where he has access to peers who can engage him in conversation.

15. Ms. McRory believes an appropriate applied behavior analysis program, as opposed to speech therapy, will best meet Claimant's goals because he has a language development problem rather than a speech and language disorder.

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16. Claimant's mother described her son as very intelligent but able to speak only like a three-year-old child. He is able to express nothing but his ordinary needs. He is quite sociable and likes to make friends but, because of his speech and language deficits, he tries to communicate with his peers by striking them. However, Claimant has been making very good progress in the speech therapy his parents are privately funding. His mother explained that Claimant pays very close attention during the therapy sessions, so much so that one speech therapy session has the same effect on him as 10 sessions of ABA.

## **LEGAL CONCLUSIONS**

1. The Service Agency should not fund two hours per week of speech therapy.
2. Welfare and Institutions Code section 4646, subdivision (a), states:

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

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3. Welfare and Institutions Code section 4646.4, subdivision (a), states:

Effective September 1, 2008, regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

(1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

(2) Utilization of generic services and supports when appropriate.

(3) Utilization of other services and sources of funding as contained in Section 4659.

(4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

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4. Welfare and Institutions Code section 4659, states in pertinent part:

(a) Except as otherwise provided in subdivision (b) or (c), the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following:

(1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program.

(2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.

(b) Any revenues collected by a regional center pursuant to this section shall be applied against the cost of services prior to use of regional center funds for those services. This revenue shall not result in a reduction in the regional center's purchase of services budget, except as it relates to federal supplemental security income and the state supplementary program.

(c) This section shall not be construed to impose any additional liability on the parents of children with developmental disabilities, or to restrict eligibility for, or deny services to, any individual who qualifies for regional center services but is unable to pay.

5. The fact that Claimant tends to pay closer attention and do better in his speech therapy sessions than in his ABA sessions, lends credence to the opinions of Ms. Canon G. and Ms. McRory, that his problem is not a speech disorder, but rather a motivational language development problem.

6. The evidence established that Claimant's speech and language development deficits should be adequately addressed through the services offered by the school district, the services being privately funded by his parents, and a properly-tailored applied behavior analysis program. However, the ABA program previously used was unsuccessful, and the new one is still in the development stage. The Service Agency will be permitted to implement the new program if the program is implemented within a reasonable time, in order to minimize the time Claimant is without his main source of speech and language development service. However, because the new ABA program is untested, the below Order denying funding for speech therapy services is issued without prejudice to Claimant renewing his request for that funding should implementation of the new ABA program be delayed, or should the new ABA program fail to meet Claimant's speech and language development needs.

## **ORDER**

**WHEREFORE, THE FOLLOWING ORDER is hereby made:**

Claimant's appeal of the Service Agency's denial of funding for two hours per week of speech therapy is denied without prejudice.

## **NOTICE**

**This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)**

DATED: May 14, 2009

\_\_\_\_\_/s/\_\_\_\_\_  
H. STUART WAXMAN  
Administrative Law Judge  
Office of Administrative Hearings